

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KPM ANALYTICS NORTH AMERICA
CORPORATION,

Plaintiff,

v.

BLUE SUN SCIENTIFIC, LLC; THE INNOVATIVE
TECHNOLOGIES GROUP & CO., LTD; ARNOLD
EILERT; MICHELLE GAJEWSKI; ROBERT
GAJEWSKI; RACHAEL GLENISTER; GREGORY
ISRAELSON; IRVIN LUCAS; and PHILIP
OSSOWSKI,

Defendants.

Civil Action No. 4:21-cv-10572-MRG

**DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION IN LIMINE
TO PRECLUDE REFERENCES TO UNRELATED PENDING OR
THREATENED LITIGATION**

Defendants Blue Sun Scientific, LLC (“Blue Sun”), The Innovative Technologies Group & Co., LTD (“ITG”), Arnold Eilert, Robert Gajewski, Rachael Glenister, and Irvin Lucas (Eilert, Gajewski, Glenister, and Lucas, collectively, the “Individual Defendants”) oppose Plaintiff KPM Analytics North America Corporation’s (“KPM”) motion to preclude evidence relating to allegedly unrelated pending or threatened litigation between KPM, Blue Sun, and ITG. KPM’s motion suggests that KPM’s service of a cease and desist letter *on the eve of trial* on Blue Sun and ITG, regarding alleged patent infringement, is not relevant and would unfairly prejudice KPM by casting it as a vexatious litigant. Contrary to KPM’s argument, such evidence is relevant to show that KPM intends to intimidate Defendants and force capitulation in an attempt to snuff out an upstart competitor and restrict customer choice. On the eve of trial in this case, KPM acquired a patent from a former competitor and is now attempting to use that as leverage

against Blue Sun and ITG. Defendants should be permitted to impeach KPM by proving that its motivation for bringing this action (and threatening another) is to intimidate and, ultimately, try to bankrupt Defendants.

In addition, contrary to the cases cited by KPM in its motion, the litigation KPM seeks to exclude involves only parties in the present lawsuit and will not cause the trial to delve into matters involving non-parties. *See Posteraro v. Citizens Fin. Grp.*, 2016 WL 64376, at *3 (D.N.H. Jan. 5, 2016) (precluding evidence of unrelated litigation between plaintiff and two other non-party employers); *Ira Green, Inc. v. Military Sales & Serv. Co.*, 2013 WL 12316017, at *3 (D.R.I. Sept. 4, 2013) (precluding references to plaintiff's lawsuit against a key factual figure in the matter); *King Pharms., Inc. v. Sandoz, Inc.*, 2010 WL 4789950, at *1 (D.N.J. Sept. 8, 2010) (precluding evidence regarding prior litigation between plaintiff and third-party for allegedly infringing on different patents). Evidence of KPM's eleventh-hour threatened litigation supports Defendants' defense that KPM is not seeking to protect any legitimate trade secret but instead corroborates that KPM's ulterior motivation in bringing this action is to drive one of its competitors out of business by any means necessary. Evidence regarding other threatened litigation between the parties to this case is therefore relevant and should be permitted.

CONCLUSION

For the foregoing reasons, Defendants request that the Court deny KPM's request for an exclusion of all references to KPM's threatened litigation against ITG and Blue Sun

ARNOLD EILERT, ROBERT GAJEWSKI,
RACHAEL GLENISTER, and IRVIN
LUCAS,

BLUE SUN SCIENTIFIC, LLC and THE
INNOVATIVE TECHNOLOGIES GROUP &
CO., LTD,

/s/ Dallin R. Wilson

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CERTIFICATE OF SERVICE

I hereby certify that, on April 27, 2023, this document was sent electronically to the registered participants as identified on the Notice of Electronic Filing. Paper copies will be sent to those indicated as non-registered participants.

/s/ Dallin R. Wilson

Dallin R. Wilson

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PHILIP OSSOWSKI,

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ORDER

WHEREFORE, this Court, having read and considered Plaintiff KPM Analytics North America Corporation's Motion *In Limine* to Preclude References to Unrelated Pending or Threatened Litigation (the "Motion"), Defendants' opposition, and any other response thereto, it is hereby

ORDERED, that the Motion is DENIED.

Dated: _____

Hon. Margaret R. Guzman
United States District Judge